

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

DANIEL E. CUEVA, et al.,

Defendants.

No. 2:24-cv-01680 AC

ORDER

Plaintiff is a state inmate who filed this civil rights action pursuant to 42 U.S.C. § 1983 without a lawyer. He has requested leave to proceed without paying the full filing fee for this action based on 28 U.S.C. § 1915. Plaintiff has submitted a declaration showing that he cannot afford to pay the entire filing fee. See 28 U.S.C. § 1915(a)(2). Accordingly, plaintiff's motion to proceed in forma pauperis is granted.<sup>1</sup>

On September 12, 2024, plaintiff submitted a complete copy of his signed complaint. ECF No. 10. He also filed a motion to refile his original complaint, or, in the alternative, a request for leave to amend his complaint. ECF No. 8. As explained in this court's August 23,

<sup>1</sup> This means that plaintiff is allowed to pay the \$350.00 filing fee in monthly installments that are taken from the inmate's trust account rather than in one lump sum. 28 U.S.C. §§ 1914(a). As part of this order, the prison is required to remove an initial partial filing fee from plaintiff's trust account. See 28 U.S.C. § 1915(b)(1). A separate order directed to CDCR requires monthly payments of twenty percent of the prior month's income to be taken from plaintiff's trust account. These payments will be taken until the \$350 filing fee is paid in full. See 28 U.S.C. § 1915(b)(2).

1 2024 order, plaintiff did not properly initiate this action because his complaint was not signed.  
2 Since plaintiff has remedied this defect, the court will strike the partial complaint (ECF No. 1) as  
3 filed in error, and will grant plaintiff's motion. The court will proceed to screen the signed  
4 complaint. ECF No. 10.

5       I.     Statutory Screening of Prisoner Complaints

6           The court is required to screen complaints brought by prisoners seeking relief against "a  
7 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). A  
8 claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.  
9 Williams, 490 U.S. 319, 325 (1989). The court may dismiss a claim as frivolous if it is based on  
10 an indisputably meritless legal theory or factual contentions that are baseless. Neitzke, 490 U.S.  
11 at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an  
12 arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989).

13           In order to avoid dismissal for failure to state a claim a complaint must contain more than  
14 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause  
15 of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
16 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
17 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the  
18 court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has facial  
19 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
20 inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. When  
21 considering whether a complaint states a claim, the court must accept the allegations as true,  
22 Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most  
23 favorable to the plaintiff, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

24       II.    Factual Allegations in the Complaint

25           Plaintiff suffers from an incurable degenerative disc disease. While an inmate at the  
26 California Medical Facility, Dr. Cody Dail, a defendant in this action, refused to renew plaintiff's  
27 chrono for in cell feeding even though it had been approved by three prior doctors for the prior  
28 four years. Without this chrono, plaintiff does not receive a morning meal because his medical

1 condition makes it impossible for him to go to the morning chow hall on time. As a result,  
2 plaintiff has suffered from hunger, weakness, light headedness, panic attacks, and weight loss.  
3 Plaintiff contends that defendant Dail was deliberately indifferent to his serious medical needs  
4 and adequate nutrition in violation of the Eighth Amendment.

5 Plaintiff also names Daniel Cueva, the prison warden, as an additional defendant in this  
6 action. As preliminary injunctive relief, plaintiff requests the court to order Warden Cueva to  
7 restore plaintiff's in cell feeding for 90 days.

8 **III. Claims for Which a Response Will Be Required**

9 After conducting the screening required by 28 U.S.C. § 1915A(a), the court finds that  
10 plaintiff has adequately stated an Eighth Amendment claim of deliberate indifference to  
11 plaintiff's nutritional needs against defendant Dr. Dail.

12 **IV. Failure to State a Claim**

13 However, the allegations in the complaint are not sufficient to state any claim for relief  
14 against Daniel Cueva in his capacity as the prison warden. Government officials may not be held  
15 liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior.  
16 Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) ("In a § 1983 suit ... the term "supervisory liability"  
17 is a misnomer. Absent vicarious liability, each Government official, his or her title  
18 notwithstanding is only liable for his or her own misconduct."). To state a claim against a  
19 supervisor, plaintiff must allege some facts indicating that the defendant either personally  
20 participated in or directed the alleged deprivation of constitutional rights, or knew of the  
21 violations and failed to act to prevent them. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).  
22 The complaint does not contain any facts demonstrating that defendant Cueva either directed or  
23 personally participated in the rejection of plaintiff's in cell feeding chrono. Plaintiff will be given  
24 the chance to include any such facts involving defendant Cueva in an amended complaint.

25 **Therefore, plaintiff has a choice to make. He may proceed immediately against**  
26 **defendant Dr. Dail on the Eighth Amendment deliberate indifference claim, or he may try**  
27 **to fix the remaining claim against defendant Cueva by filing a first amended complaint.**  
28 **After making his choice, plaintiff must return the attached Notice of Election form to the**

1      **court within 21 days from the date he receives this order.**

2              If plaintiff elects to proceed against defendant Dr. Dail without amending the complaint,  
3      the court will proceed to serve the complaint. By choosing this option, plaintiff will be agreeing  
4      to voluntarily dismiss defendant Cueva. If plaintiff chooses to amend the complaint, he will be  
5      given time to file an amended complaint.

6              V.      Plain Language Summary for Party Proceeding Without a Lawyer

7              Some of the allegations in the complaint state claims against the defendants and some do  
8      not. You have a choice to make. You may either (1) proceed immediately on your Eighth  
9      Amendment deliberate indifference claim against Dr. Dail; or, (2) try to amend the complaint. If  
10     you want to go forward without amending the complaint, you will be voluntarily dismissing  
11     without prejudice your claim against defendant Cueva. Once you decide, you must complete the  
12     attached Notice of Election form and return it to the court within 21 days.

13              To decide whether to amend your complaint, the court has attached the relevant legal  
14     standards that may govern your claims for relief. See Attachment A. Pay particular attention to  
15     these standards if you choose to file an amended complaint.

16              In accordance with the above, IT IS HEREBY ORDERED that:

17              1. Plaintiff's motion to refile his original complaint (ECF No. 8) is GRANTED.  
18              2. The partial complaint (ECF No. 1) is stricken from the docket as filed in error.  
19              3. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 5) is GRANTED.  
20              4. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
21     is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
22     § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
23     appropriate agency filed concurrently herewith.

24              5. Plaintiff's claims against defendant Cueva do not state a claim for which relief can be  
25     granted.

26              6. Plaintiff has the option to proceed immediately on his Eighth Amendment deliberate  
27     indifference claim against defendant Dr. Dail as set forth in Section III above, or to amend the  
28     complaint.

1       7. Within twenty-one days of service of this order, plaintiff shall complete and return the  
2 attached form notifying the court whether he wants to proceed on the screened complaint or  
3 whether he wants to file an amended complaint. If plaintiff does not return the form, the court  
4 will assume that he is choosing to proceed on the complaint as screened and will recommend  
5 dismissal without prejudice of defendant Cueva.

6 || DATED: October 10, 2024

Allison Claire  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

DANIEL E. CUEVA, et al.,

Defendants.

No. 2:24-cv-01680-AC

NOTICE OF ELECTION

Check one:

Plaintiff wants to proceed immediately on the Eighth Amendment deliberate indifference claim against defendant Dr. Dail without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice defendant Cueva pursuant to Federal Rule of Civil Procedure 41(a).

Plaintiff wants time to amend the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Paul David Carr,  
Plaintiff

## Attachment A

This Attachment provides, for informational purposes only, the legal standards that may apply to your claims for relief. Pay particular attention to these standards if you choose to file an amended complaint.

## I. Legal Standards Governing Amended Complaints

If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must specifically identify how each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his amended complaint complete. See Local Rule 220. This is because, as a general rule, an amended complaint replaces the prior complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012). Therefore, in an amended complaint, every claim and every defendant must be included.

## II. Legal Standards Governing Substantive Claims for Relief

## A. Linkage Requirement

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that

1 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th  
 2 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must  
 3 link each named defendant with some affirmative act or omission that demonstrates a violation of  
 4 plaintiff’s federal rights.

5                   B. Eighth Amendment Deliberate Indifference Standard

6                   Denial or delay of medical care for a prisoner’s serious medical needs may constitute a  
 7 violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.  
 8 97, 104-05 (1976). An individual is liable for such a violation only when the individual is  
 9 deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d  
 10 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.  
 11 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

12                   In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439  
 13 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other  
 14 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the  
 15 plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s  
 16 condition could result in further significant injury or the ‘unnecessary and wanton infliction of  
 17 pain.’” Id., citing Estelle, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he  
 18 existence of an injury that a reasonable doctor or patient would find important and worthy of  
 19 comment or treatment; the presence of a medical condition that significantly affects an  
 20 individual’s daily activities; or the existence of chronic and substantial pain.’” Lopez, 203 F. 3d  
 21 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

22                   Second, the plaintiff must show the defendant’s response to the need was deliberately  
 23 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act  
 24 or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the  
 25 indifference. Id. Under this standard, the prison official must not only “be aware of facts from  
 26 which the inference could be drawn that a substantial risk of serious harm exists,” but that person  
 27 “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective  
 28 approach” focuses only “on what a defendant’s mental attitude actually was.” Id. at 839. A

1 showing of merely negligent medical care is not enough to establish a constitutional violation.  
2 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A  
3 difference of opinion about the proper course of treatment is not deliberate indifference, nor does  
4 a dispute between a prisoner and prison officials over the necessity for or extent of medical  
5 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058  
6 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of  
7 medical treatment, “without more, is insufficient to state a claim of deliberate medical  
8 indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).  
9 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the  
10 prisoner must show that the delay caused “significant harm and that Defendants should have  
11 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

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